

AMENDED IN ASSEMBLY MARCH 18, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1953

Introduced by Assembly Member Vargas

February 12, 2004

An act to amend ~~Section 15027~~ *Sections 15006 and 15027 of, and to add Section 15027.1 to*, of the Insurance Code, relating to public insurance adjusters.

LEGISLATIVE COUNSEL'S DIGEST

AB 1953, as amended, Vargas. Public insurance adjusters: contracts.

Existing law provides for the licensing and regulation of public insurance adjusters by the Insurance Commissioner. Existing law *prohibits a person from acting as a public insurance adjuster unless he or she is licensed, and provides for a civil penalty not exceeding \$5,000 for a violation of these provisions, or not exceeding \$10,000 if the violation was willful.*

This bill would raise these fines to \$10,000 if the violation was not willful, and \$25,000 if the violation was willful.

Existing law prohibits a public adjuster from acting in this capacity without having first entered into a contract, in writing, on a form approved by the commissioner and executed in duplicate by the public adjuster and the insured or a duly authorized representative. A violation of the provisions regulating public insurance adjusters is a crime.

This bill would require that the contract include specified provisions, including a provision disclosing the percentage of the insured's claim, or other fee, that the public adjuster will charge for his or her services,

and would further require that the adjuster obtain the initials of the insured next to this provision. ~~It would prohibit a public adjuster from entering into a contract with any insured unless one week has elapsed since the occurrence of the event on which the claim is based, or the insured represents that he or she has consulted with the insurance adjuster for the insurer regarding the claim, whichever is earlier. A violation of these provisions would be a crime. By creating a new crime, the bill would impose a state-mandated local program.~~

Existing law prohibits a public insurance adjuster from soliciting a client for employment between 6 p.m. and 8 a.m.

This bill would apply this prohibition, in addition, to any other person or entity offering, for a fee, service related to a loss-producing occurrence. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The bill would also prohibit a public insurance adjuster from soliciting a contract of engagement until 7 calendar days have elapsed since the occurrence of a disaster, as defined. This prohibition would not apply if the adjuster is contacted by the insured or the insured's representative. By creating a new crime, the bill would impose a state-mandated local program.

Existing law requires the commissioner to enforce the execution of laws regulating the business of insurance.

This bill would require the commissioner to enforce the provisions of law regarding, and prosecute all violations of these provisions by, persons or entities, whether licensed or not, that hold themselves out or act as public insurance adjusters.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15006 of the Insurance Code is
2 amended to read:

15006. (a) No person shall engage in a business regulated by this chapter, or act or assume to act as, or represent himself or herself to be, a licensee unless he or she is licensed under this chapter. Any person who violates this subdivision shall, in addition to any other penalties provided by law, be liable to the state for a civil penalty in an amount not exceeding ~~five~~ *ten* thousand dollars ~~(\$5,000)~~ *(\$10,000)*, or if that violation is willful, in an amount not exceeding ~~ten~~ *twenty-five* thousand dollars ~~(\$10,000)~~ *(\$25,000)*. The penalty shall be assessed and recovered in a civil action brought by the commissioner in a court of competent jurisdiction in the name of the people of the State of California.

(b) Any contract for services regulated by this chapter that is entered into by an insured with any person who is in violation of subdivision (a) may be voided at the option of the insured, and the insured shall not be liable for the payment of any past services rendered, or future services to be rendered, by that person under that contract or otherwise.

(c) Whenever it appears to the commissioner that any person is engaging in acts or practices in violation of subdivision (a), the commissioner may, without any requirement of notice or hearing, issue and cause to be served upon that person an order requiring that person to cease and desist immediately from engaging further in those acts or practices.

(d) Any person who fails to comply fully with an order of the commissioner issued under subdivision (c) shall be liable to the state for a civil penalty in an amount not exceeding one hundred dollars (\$100) per day for each and every day that the violation or failure to comply continues, but in no event to exceed a maximum amount of five thousand dollars (\$5,000). The commissioner shall collect the amount so payable and may bring an action in a court of competent jurisdiction in the name of the people of the State of California to enforce collection. This penalty is in addition to any other penalties provided by law.

(e) The powers vested in the commissioner by this section are in addition to any and all other powers and remedies vested in the commissioner by law, and nothing herein shall be construed as requiring the commissioner to employ the powers conferred in this section instead of or as a condition precedent to the exercise of any other power or remedy vested in the commissioner.

SEC. 2. Section 15027 of the Insurance Code is amended to read:

15027. (a) No licensee shall, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the insurance commissioner and executed in duplicate by the public adjuster and the insured or a duly authorize representative. One copy of this contract shall be kept on file by the licensee, available at all times for inspection, without notice, by the commissioner or his or her duly authorized representative.

(b) No licensee shall solicit or attempt to solicit a client for employment during the progress of a loss-producing occurrence.

(c) No licensee *or any other person or entity offering, for a fee, service related to a loss-producing occurrence, shall solicit a client for employment or initiate any contract with a policyholder* shall solicit a client for employment between the hours of 6 p.m. and 8 a.m.

(d) No licensee shall use any form of contract other than that approved by the commissioner and which contains each of the following:

~~(A)~~

(1) A provision allowing the client to rescind the contract by written notice to the licensee within 72 hours of signature ~~and includes in 10 point type the statement: "WE REPRESENT THE INSURED ONLY."~~, in the following form:

Notice of Cancellation

THE INSURED may cancel this transaction within 72 hours after the effective date and time of this Agreement by mailing or delivering a signed and dated copy of this cancellation notice, or any other written notice, or by sending a telegram, to (the company) at the address indicated herein not later than 72 hours after signing this agreement.

I hereby cancel this transaction _____

Date

Insured's Signature

~~(B)~~

(2) *The statement “WE REPRESENT THE INSURED ONLY” prominently displayed in 10-point type.*

(3) A provision disclosing the percentage of the insured’s claim, or other fee, that the licensee will charge for his or her services. The licensee shall obtain the initials of the insured next to this provision.

(e) No licensee shall knowingly make any false report to his or her employer or divulge to any other person, except as he or she may be required by law to do so, any information acquired by him or her except at the direction of the employer or a client for whom the information is obtained.

(f) No licensee shall use a badge in connection with the official activities of the licensee’s business.

(g) No licensee shall permit an employee or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatever to conduct business for which a license is required under this chapter.

~~(h) A licensee shall not enter into a contract under this section with any insured unless one week has elapsed since the occurrence of the event on which the claim is based, or the insured represents that he or she has consulted with the insurance adjuster for the insurer regarding the claim, whichever is earlier.~~

(h) *Pursuant to subdivisions (a) and (c) of Section 15006, the commissioner shall enforce the provisions of this chapter regarding, and prosecute all violations of this chapter by, persons or entities, whether licensed or not, that hold themselves out or act as public insurance adjusters.*

~~SEC. 2.~~

SEC. 3. *Section 15027.1 is added to the Insurance Code, to read:*

15027.1. (a) *Notwithstanding subdivision (c) of Section 15027, a licensee shall not solicit a contract of engagement under this chapter until seven days have elapsed since the occurrence of a disaster.*

(b) *Subdivision (a) shall not apply if the licensee is contacted directly by the insured or the insured’s representative.*

(c) *For the purposes of this section, “disaster” means a loss-producing event that damages or destroys more than 25 dwellings.*

1 *SEC. 4.* No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

